

**TAB 7**

1 Volume II  
2 Pages 1 to 73  
3 Exhibits 5 to 14

4  
5 UNITED STATES DISTRICT COURT  
6  
7 DISTRICT OF MASSACHUSETTS

8 MICHAEL J. WHALON, -----  
9 Plaintiff(s),

10  
11 v. Civil Action  
12 CHRISTY'S OF CAPE COD, LLC, No. 04-11939-JGD  
13 Defendant(s).  
14 -----  
15

16 CONTINUED DEPOSITION OF PATRICK MCKEOWN, a witness  
17 called by counsel for the Plaintiff, taken pursuant  
18 to the applicable rules, before Diane L. McElwee,  
19 Registered Merit Reporter and Notary Public in and  
20 for the Commonwealth of Massachusetts, at the  
21 LAW OFFICES OF DAVID O. SCOTT, P.C., 200 Chauncy  
22 Street, Mansfield, Massachusetts, on Thursday,  
23 February 2, 2006, commencing at 2:45 PM.  
24

25  
26 DIANE L. McELWEE, RPR, RMR  
27 152 Seekonk Street  
28 Norfolk, Massachusetts 02056  
29 Tel. and Fax -- 508-528-1055  
30 e-mail -- dlmdepos@yahoo.com

1 MR. COLOMB: Same stipulations, and  
2 we will keep numbering the exhibits in sequence.

3 MR. SCOTT: Let's see how far we  
4 got. I have four exhibits with subparts, a number of  
5 subparts to Exhibit 4. Let me grab the transcript to  
6 verify all the exhibits are here.

7 MR. COLOMB: Okay.

8 (Pause)

9 MR. SCOTT: It looks to me like the  
10 last exhibit was 4G2, which we do have 4G2.

11 Q I know I wrote it down, but could you tell  
12 me the correct pronunciation of your name?

13 A McKeown.

14 Q McKeown?

15 A Close enough.

16 Q I am going to show you a document and ask  
17 you if you can identify it. That was recently  
18 furnished to me by your counsel. I believe it  
19 consists of four pages.

20 A Yes, I do recognize it.

21 0 What is that document?

22 A It is a section of my Franklin planner that  
23 I have

24 Q Is there a date on any of the pages?

4 Q All those dates are in February?

5 A Correct, 2002.

6 MR. SCOTT: Why don't we get this  
7 marked first.

8 (Exhibit 5 marked for identification)

9 Q I am going to hand you back what's now been  
10 marked as Exhibit 5. That appears to be handwriting  
11 of -- it appears to be a copy of an original document  
12 with handwriting on it; is that correct?

13 A Correct.

14 Q And is that your handwriting on that  
15 document?

16 A Yes, it is.

17 Q Are you the author of those four pages other  
18 than the form itself, the handwritten parts?

19 A Yes, I am.

20 Q Do you have a recollection as to when you  
21 created those -- I am going to call them notes if you  
22 prefer.

23 A Sure.

Q What I am referring to is your handwritten

1 comments, whatever they may be. Do you remember when  
2 you made those handwritten annotations?

3 A Yes, I do.

4 Q Were they made in the time period that's  
5 reflected on the dates of those documents, which I  
6 believe is the 22d to the 24th of February, or are  
7 they all made on one date?

8 A They are all made on one date.

9 Q What was the date they were made?

10 A The 22d of February, 2002.

11 Q I am going to ask you to do something that's  
12 a little bit tedious, but I have to because I tried  
13 to read those notes myself and I think I got about  
14 80 percent. So if I could ask you to read into the  
15 record those notes, I would appreciate it.

16 A You want me to read the four pages?

17 Q Please.

18 MR. COLOMB: Can I maybe suggest we  
19 take a brief minute off the record so he can review  
20 it first so it will go more smoothly.

21 MR. SCOTT: Absolutely.

22 (Discussion off the record)

23 A Before I read this, can I explain to you the  
24 top two sections of this document?

1 Q It's up to your counsel.

2 MR. COLOMB: I don't have a problem.

3 I suspect -- why don't you read it in and he can ask  
4 you.

5 Q I just wanted to get it in completely for  
6 the record.

7 A Okay. So it's February 22, 2002.

8 Q We are back on the record.

9 A 2:02 PM, Michael Whalon; one, Cash Problem,  
10 608; two, Deposits at 608; three, Grand Totals at  
11 608; four was Money Orders, 608; five, 610, Deposit  
12 Shortage.

13 5:20 PM, Brian Lipps, 401-258-0128;  
14 one, Cement Block Construction; two, Year Built,  
15 1974; three -- I think it's Sprinkler System; four,  
16 Alarm Central; five, Security Camera.

17 2:30 PM, Michael Whalon; one, Asked  
18 about shrink problems, 607, 602, and 612; two, Asked  
19 about manager 610, what was the plan; three, Asked  
20 what was going on with 608 cash problem.

21 One, No real answers, updates on shrink  
22 issues; two, Planned to replace manager at 610  
23 Monday, 25th of February with Tim Silverberg, was  
24 training in store starting Monday, planned

1 replacement later in week; three, He said he  
2 terminated two individuals who were the problem in  
3 608, should be okay.

4 I asked him about the cash situation in  
5 the store. He said he thought it was corrected.

6 I asked him about a number of deposit  
7 shortages. He said he was not aware of any problems.  
8 I asked him how the grand totals could --  
9 February 23d page -- could be changed. He said if  
10 system crashed, it could be reset, but everything  
11 would be set from there. He asked why I was asking  
12 him these questions. I told him I was trying to find  
13 out why we had these problems and cash shortages. I  
14 gave him copies of 2/13/02 Store 608 EOD report and  
15 discrepancy between beginning and ending grand total.  
16 He asked me where I got these reports and why I did  
17 not give these reports to him. I replied that I was  
18 working on the issue. He asked how he was supposed  
19 to be responsible if the office did not provide the  
20 reports to him.

21 I showed him 2/5/02 EOD report,  
22 beginning reading increased by \$1500, deposit shorted  
23 by \$1500 previously. He asked me if I was accusing  
24 him of stealing. I am not a thief, he said.

1                   I replied, I am trying to understand  
2 who is doing this; I want answers. I asked him if he  
3 ever deposited bank deposits for Store 608. He  
4 replied that the manager asked him to drop off  
5 deposits for her. I stated that two deposits he  
6 dropped off were short a total of \$1500, deposit from  
7 EOD summary 1/9/02 of 3,680 was short a thousand  
8 dollars, 1/21/02 deposit of 2735.95 was short \$500.  
9 He stated that he has no access to the bag as it is  
10 locked. I asked him why he dropped it off at the  
11 Hyannis rotary. He said it was on his way down here.  
12 He asked why he did not get a call from head office  
13 on this. I told him I got called. I told him that  
14 didn't he think it was strange these deposits he made  
15 were short. He said he did assemble the deposits; he  
16 just dropped them off. I asked him why he would put  
17 himself in that position. He said he was helping out  
18 the manager.

19                   Page 3, February 24th. I proceeded to  
20 show the EOD reports and copies of the deposits. I  
21 told him whoever did this changed the paperwork at  
22 store level to reflect the new deposit amounts. He  
23 asked me where I got the sheets. I replied from the  
24 store.

1                   I then asked him about a money order  
2 for \$500 on 10/29/01 -- was made out, Not Intended  
3 for Purpose -- looks like Dori, the system manager at  
4 610's signature, listed as miscellaneous paid out  
5 \$500, said it was probably deposited by store.

6 Sometimes it happens that way. Asked him about a  
7 miscellaneous paid out for 576 on 1/14/02. I told  
8 him Karen asked him about it, and he told her it was  
9 lottery paid out. Paperwork was checked; no lottery  
10 paid outs were supported by lottery detail. I asked  
11 him why he didn't follow up, and he said he forgot.  
12 I replied that at the very least he failed to do his  
13 job which first and foremost is to make sure the  
14 money gets to the bank.

15                   I asked him had he any problems. He  
16 said, I do not need money. I have a second job that  
17 pays 4 to \$500 per week. I just refinanced my house.  
18 I am getting rid of one of the SUV's. I asked him  
19 about he and Dori Caussey, the assistant manager at  
20 610. He said he was married and nothing was  
21 happening. I asked him about bringing her to work  
22 last week, and he said her car was broken and needed  
23 a ride; what am I supposed to do.

24                   I told him a deposit was short \$400

1 over there. He said it was called in. I told him  
2 the paperwork was changed. He asked how did I know  
3 that. I replied that I had Bill Potter drop me off  
4 his EOD report. I told him the deposit was signed by  
5 Dori.

6 Next page, "Activity 5, Mission  
7 Statement" is the top of the page. It's Michael  
8 Whalon interview continued, page 4.

9 He replied about 610 that Bill was a  
10 problem also. He gave both of them until this week  
11 to solve the problem, and then if they did not, he  
12 would change management of Store 610.

13 He asked me where all this was going.  
14 I replied that he failed to perform his job. I  
15 require the very basics of performance, getting sales  
16 rung in and deposits to the bank. I told him I was  
17 inclined to terminate him. I would recommend him as  
18 a salesperson to Pine State.

19 He seemed shocked. He said, After all  
20 I have done for this company, coming in with no  
21 experience, doing the computers, stores, 24 hours a  
22 day on call. I do not deserve this. I replied that  
23 I cannot live with these shortages. He said we lived  
24 with Peter Gorse (phon.) losing \$40,000 in inventory,

1 Kenny losing excess dollars and we did not fire them.  
2 Put me back in a store before this.

3                   I told him that the manager of 608 has  
4 an issue with these shortages and your deposits. I  
5 told him I got most of the reports from the store.

6                   I thought briefly and told him I would  
7 suspend him for three days for failing to perform his  
8 duties in getting the cash to the bank.

9                   We then -- we went back to the  
10 paperwork -- I can't read the next word -- one of the  
11 deposits again, and I told him he signed off on the  
12 deposit being okay, but no slip was present. He made  
13 that deposit, but the bank acknowledgment was not  
14 there. He said it was in the store. That was one of  
15 the deposits that was short.

16                   I told him that he was suspended until  
17 Thursday; that I needed to talk with Christy.

18                   Meeting concluded about 4:35 PM.

19           Q     Having just received this document today I  
20 believe from your counsel, is there some reason why  
21 this document was not produced earlier than today to  
22 your knowledge?

23           A     No.

24           Q     Did you have possession of this document

1 since you became aware that there was litigation  
2 ongoing between Mr. Whalon and Christy's of Cape Cod,  
3 LLC?

4 A It was in my planner.

5 Q Was it a document that you simply forgot  
6 about in your preparations with counsel for your  
7 deposition and for our discovery in the case, meaning  
8 the interrogatories and the request for production of  
9 documents?

10 A Yes.

11 Q As you sit here today are there any other  
12 documents that you are aware of that you might have  
13 relating to Michael Whalon and specifically relating  
14 to allegations of shortages around the time of  
15 February 2002 and concerning his termination that you  
16 have not produced?

17 A Not that I am aware of.

18 Q Who was the manager of Store 608 at the time  
19 all this was going on?

20 A Kristine DeCosta.

21 Q Is this the manager I believe you testified  
22 earlier that she had formed some opinions regarding  
23 Mr. Whalon and his performance?

24 MR. COLOMB: Objection. You can

1 answer that.

2 A Correct.

3 Q In evaluating the documentation regarding  
4 these shortages, did you have documentation that you  
5 referred to in these notes in your possession that  
6 Mike Whalon would not have ordinarily been able to  
7 obtain in the normal course of his performing his  
8 duties?

9 A Could you rephrase that?

10 Q Sure. Let me come at it a different way.

11 I am not sure I could find it if we  
12 need to do so, but somewhere in the notes that you  
13 have read into the record there is a comment to the  
14 effect by Mr. Whalon, How am I supposed to know about  
15 these things if I don't get the reports, or words to  
16 that effect. My question is were there reports that  
17 you had in your investigation of these shortages that  
18 he would not have ordinarily been privy to?

19 MR. COLOMB: Objection. You can  
20 answer the question.

21 A We would have to go through document by  
22 document. It's a very vague question. The only one  
23 that he would not have readily available would be the  
24 deposit slips because that was from the bank. That

1 shortages.

2 A At the time of the meeting?

3 Q Yes.

4 A Not that I am aware of.

5 Q Were these notes made contemporaneously with  
6 the meeting, in other words, either during or  
7 immediately after the meeting?

8 A Right after 4:35.

9 Q So you wrote these notes after Mr. Whalon  
10 had departed from your presence after the meeting on  
11 the 22d?

12 A I would like to clarify that the top of page  
13 one, which is the 22d, from 2:02 PM down to No. 5,  
14 that was written before the meeting.

15 Q Okay.

16 A Next, Brian Lipps, the telephone number down  
17 to No. 5, that was written before the meeting.

18 Q Let me stop you there. That segment of the  
19 first page regarding Brian Lipps down to circled  
20 No. 5, do any of those notes have anything to do with  
21 Mr. Whalon?

22 A No. It was things I had to do that  
23 afternoon that I wrote in advance.

24 Q Then the next time entry is --

1 A -- 2:30 PM, Mike Whalon.

2 Q Then the balance of the four pages, the  
3 handwritten portion, deals with Mike Whalon, correct?

4 A Correct. That was written after the  
5 meeting.

6 Q Now at any point in Mr. Whalon's employment  
7 did you become aware that he had any mental or  
8 physical health issues?

9 A Physical issues.

10 Q What were the issues that you became aware  
11 of?

12 A He had an ankle problem and I believe a jaw  
13 problem.

14 Q Were you ever made aware prior to his  
15 termination of any mental health issues?

16 A No.

17 Q Did you ever receive any fax similes from  
18 any health care providers regarding any mental health  
19 care issues regarding Michael Whalon?

20 A Prior to his termination?

21 Q Prior to his termination.

22 A And after this meeting on the 22d?

23 Q Why don't we say prior to his termination at  
24 any time.

1 A I did receive a doctor's note faxed to me.

2 Q Do you remember when that was?

3 A The 27th of February. It was dated the 27th  
4 of February 2002. I received it the following day.

5 Q Do you recall the substance of that note?

6 MR. COLOMB: Objection.

7 You can answer that question.

8 A It was a doctor's note stating Michael could  
9 not work for a period of time due to anxiety I  
10 believe.

11 Q What, if anything, did you do after you  
12 received that note regarding Mr. Whalon or his  
13 employment?

14 A Placed it in his file, called my attorney.

15 Q Did you ever have any discussions with  
16 Mr. Whalon personally about any of his mental health  
17 issues?

18 MR. COLOMB: Objection. You can  
19 answer that.

20 A Could you be more specific?

21 Q Did you ever discuss with Mr. Whalon the  
22 note that you just testified that you received from a  
23 physician?

24 A No.

1 did you relate the entries on page 5 to when you  
2 received this whole packet?

3 A Store 608.

4 Q But there is nothing on page 5 that tells us  
5 it's Store 608, correct?

6 MR. COLOMB: Objection. You can  
7 answer that.

8 Q Is there anything on page 5 that would tell  
9 you that these entries relate to Store 608?

10 A There could be, but I do not know the  
11 terminal number for the lottery by heart.

12 Q I am asking you what you know. Would you  
13 know looking at --

14 A Not at that number, no.

15 Q Let me show you a document and ask you if  
16 you can identify it.

17 A Yes.

18 Q Is that the note that you stated you saw  
19 which first indicated to you that Mr. Whalon had any  
20 type of mental health issue?

21 MR. COLOMB: Objection. You can  
22 answer.

23 A Yes.

24 Q And do you know whether that document was

1 received on the 27th by your office?

2 A I first saw it on the 28th.

3 Q Okay. Was it sent by fax simile, if you  
4 recall?

5 A I believe it was.

6 Q At that point what was Mr. Whalon's  
7 employment status with Christy's on the 27th of  
8 February, 2002?

9 A Suspension.

10 Q I may have asked this, and I apologize if I  
11 am being redundant. I didn't see it in my notes.  
12 Did you ever accuse Mr. Whalon of having an affair  
13 with Dori Caussey?

14 A Can you rephrase that?

15 Q Sure.

16 Did you ever indicate to Mr. Whalon  
17 that you had formed an opinion that he was  
18 romantically or sexually involved with Dori Caussey?

19 A No.

20 Q Did you ever make any remarks to Mr. Whalon  
21 regarding his relationship with Dori Caussey other  
22 than his relationship of one employee of Christy's of  
23 Cape Cod, LLC, to another?

24 MR. COLOMB: Objection. You can

1 answer it.

2 A Very ambiguous question.

3 Q I will try to rephrase it.

4 Did you ever discuss with Mr. Whalon  
5 any relationship of any type that he may have had  
6 with Dori Caussey outside of the normal and customary  
7 interaction that he would have as an employee of  
8 Christy's?

9 A I asked him the relationship between he and  
10 Dori Caussey.

11 Q Why did you feel the need to ask him about  
12 that relationship?

13 A Based on the investigation I concluded there  
14 was some issues between Stores 608 and 610, and she  
15 operated both stores.

16 Q Ms. DeCosta was the supervisor of Store 608?

17 A She was the store manager.

18 Q Of 608 at this relevant time of February,  
19 March 2002?

20 A Correct.

21 Q Who was the manager of Store 610 during this  
22 same time period?

23 A There was no store manager at that time.

24 Q Who had operational responsibility for the

1 store?

2 A Operational responsibility?

3 Q Right.

4 A Michael Whalon did and also the two  
5 assistant managers at that location.

6 Q One was Dori Caussey?

7 A Correct.

8 Q And who was the other?

9 A Bill Potter.

10 Q Other than Mr. Whalon and Chris Downey, did  
11 you speak with any other persons -- strike that.

12 Did you speak with any other employees  
13 of Christy's -- when I say "Christy's" I mean  
14 Christy's of Cape Cod, LLC -- regarding the shortages  
15 and discrepancies in Store 608 or Store 610 in the  
16 February -- let's say January, February timeframe of  
17 2002?

18 A Yes.

19 Q And who else did you have conversations  
20 with?

21 A Kristine DeCosta.

22 Q Anyone else?

23 A Bill Potter.

24 Q Can you describe the conversation you had

1 with Bill Potter or conversations stating what you  
2 said to him and what he said to you as best as you  
3 can recall?

4 A I asked for reports on certain days from  
5 Bill Potter.

6 Q Did he provide those reports to you?

7 A Yes, he did.

8 Q And what reports did he give to you in terms  
9 of the type of documentation?

10 A Store sales report.

11 Q Anything else?

12 A Deposit slips.

13 Q Anything else that you recall?

14 A Not that I recall.

15 Q Did Mr. Potter have any explanation  
16 regarding any shortages or financial discrepancies in  
17 the store he was the assistant manager of during that  
18 timeframe?

19 A Not that I recall.

20 Q Would it be the store manager, the assistant  
21 store manager's primary responsibilities to account  
22 for store funds, both receipts and disbursements?

23 MR. COLOMB: Objection. You can  
24 answer that.

1 A Which store are we talking about?

2 Q Any store.

3 A It's the supervisor, the manager, assistant  
4 manager's responsibility.

5 Q Mr. Whalon had supervisory responsibility  
6 for more than one store, correct?

7 A Correct.

8 Q The manager and assistant manager generally  
9 stay at the store they are assigned to, correct?

10 A Correct.

11 Q Isn't it the position of the supervisor  
12 or -- I am sorry -- manager or assistant manager to  
13 account for receipts, make out deposit slips, and  
14 account for cash-out?

15 MR. COLOMB: Objection. You can  
16 answer that.

17 A You have asked me three different questions.  
18 You have asked me the supervisor, manager, and  
19 assistant manager. Do you mean the manager and  
20 assistant manager?

21 Q Yes.

22 A It's the manager and assistant manager, when  
23 the manager is not there, to count the cash and make  
24 the deposits.

1 Q By the way, did you take any disciplinary  
2 action against any of the assistant managers or  
3 managers to either Store 608 or 610 regarding these  
4 discrepancies in those stores, suspend them,  
5 discipline them in any way, terminate them?

6 A Regarding these matters?

7 Q Yes.

8 A No.

9 Q Wouldn't they also, as well as Michael  
10 Whalon, have responsibility for the financial  
11 accounting of those stores?

12 A Yes.

13 Q Wouldn't they be the employees in the best  
14 position to account for store funds?

15 MR. COLOMB: Objection.

16 You can answer that.

17 A Fairly ambiguous question.

18 Q What is the financial responsibility of a  
19 manager, assistant manager of a store?

20 A Ensure the sales get rung up and cash gets  
21 to the bank.

22 Q And that all money is accounted for,  
23 correct?

24 A Correct.

1 Q And that wasn't done in these stores,  
2 correct?

3 MR. COLOMB: Objection. You can  
4 answer.

5 Q At least it was your opinion that this was  
6 not done in these stores, 610 and 608, during the  
7 January, February 2002 time period?

8 MR. COLOMB: Objection. You can  
9 answer.

10 A Correct.

11 Q So why didn't you discipline the managers?

12 A It's ultimately the responsibility of the  
13 supervisor to discipline managers.

14 Q You first brought these matters to  
15 Mr. Whalon's attention on what date?

16 A 22d of February 2002.

17 Q I would like to show you a document which  
18 has been previously marked as Exhibit 3A. Do you  
19 remember that document?

20 A Yes, I do.

21 Q And is that a performance action suspending  
22 Mr. Whalon?

23 A Yes, it is.

24 Q So if you brought -- I am sorry. Strike

1 that.

2                   What was the date of the initiation of  
3 the suspension?

4           A     The commencement of the suspension?

5           Q     Right.

6           A     The 25th.

7           Q     What day was the 22d, do you recall?

8           A     Friday.

9           Q     You notified him on the 22d that he is  
10 suspended, correct?

11          A     Effective the 25th, correct.

12          Q     So if you first brought these matters to his  
13 attention on the 22d, suspended him effectively the  
14 25th, how was he supposed to conduct an investigation  
15 or discipline the store managers?

16                   MR. COLOMB: Objection. You can  
17 answer.

18          A     He had opportunity before that to  
19 investigate a number of these issues. He failed to  
20 do so.

21          Q     But you didn't bring it to his attention  
22 until the 22d, correct?

23          A     On a number of these issues? On the 22d.

24          Q     Let me show you another document and ask you

1 if you have seen it before.

2 MR. SCOTT: I am sorry. Before you  
3 answer, I don't remember if we marked one of these or  
4 not. I am referring to the copy of a document  
5 entitled, Bethel Medical Group, dated February 27,  
6 2002.

7 MR. COLOMB: I don't think you did.

8 MR. SCOTT: I don't think we did.

9 Let's mark that.

10 (Exhibit 7 marked for identification)

11 Q Have you ever seen the document which I  
12 placed before you?

13 A I have.

14 Q Could you identify that document, please?

15 A It's from the Charis Counseling Center.

16 It's a doctor's note regarding Michael would be out  
17 of work due to an extreme anxiety, panic attacks,  
18 severe depression, returning April 1, 2002.

19 Q Was that document faxed to your office?

20 A I believe it was.

21 MR. SCOTT: I will have that marked.

22 (Exhibit 8 marked for identification)

23 Q What, if anything, it you do regarding  
24 Michael Whalon after receipt of the document that's

1 now been marked as Exhibit 8?

2 A It was placed in his personnel file and I  
3 spoke to my attorney.

4 Q I show you another document and ask you if  
5 you can identify it. Is that a letter you sent to  
6 Mr. Whalon dated March 4, 2002?

7 A Correct.

8 MR. SCOTT: Let me mark this. For  
9 the record, it consists of two pages.

10 (Exhibit 9 marked for identification)

11 Q Do you see in the second paragraph, first  
12 sentence, says, At this time we have further reviewed  
13 the facts?

14 A Correct.

15 Q What, if anything, did you do to further  
16 review the facts of Mr. Whalon's case between your  
17 meeting of February 22d and the sending of this  
18 letter, which has now been marked as Exhibit 9?

19 A I went over the paperwork that I think you  
20 have listed in the documents here, and I reviewed  
21 some of the issues Mike discussed at our meeting.

22 Q Do you have any opinion based on facts as to  
23 whether or not shortages are customary regarding  
24 these various stores?

1 MR. COLOMB: Objection. You can  
2 answer that.

3 A What do you mean by "customary"?

4 Q Have they ever occurred before?

5           A     Shortages occur all the time. That's the  
6           nature of our business.

7 Q Why do you say that?

8           A     Dealing with cash there is going to be  
9           shortages.

10 Q What was there about this situation that  
11 drew your attention to it and to Mr. Whalon as a  
12 supervisor?

13 A Highly irregular changes of grand totals and  
14 documentation.

15 Q Had you ever in the past during Mr. Whalon's  
16 employment discussed with him his handling or  
17 investigation of shortages or disciplining of store  
18 managers regarding shortages?

19 A Yes.

20 Q What was different about this situation from  
21 the prior occasions, if anything?

22 | A There was a manipulation of the system.

23 Q By whom?

24 A I don't know.

1 Q Mr. Whalon would not have been the only  
2 person with the capability to manipulate the system,  
3 correct?

4 MR. COLOMB: Objection. You can  
5 answer.

6 A I don't know that.

7 Q You don't know who would be capable of  
8 manipulating the system based on their position with  
9 the company?

10 A You might want to break that question into  
11 two parts.

12 Q First of all, what system are you talking  
13 about?

14 A Talking about the sales reports and the  
15 grand totals and adjusting figures.

16 Q Any other documents or systems?

17 A Changing deposits.

18 Q Any other systems?

19 A Not that I remember right now.

20 Q Who within the organization would then have  
21 the capability to affect or change the data regarding  
22 those systems?

23 A You would have to break that down.

24 Q Who would have the ability or capability

1 within Christy's to change sales reports?

2 A Somebody who is familiar with the system  
3 from both the office and the store.

4 Q Could it be affected at the store level?

5 A In some circumstances it could be.

6 Q By the manager or assistant manager?

7 A Could be.

8 Q What about the grand totals? Who would have  
9 the capability to affect those?

10 A Somebody who has a very good knowledge of  
11 the system.

12 Q Could that be done at the store level?

13 A Could be.

14 Q What about the deposits?

15 A Could be.

16 MR. COLOMB: Objection. I am not  
17 sure what the question is.

18 Q It's the same question. Who would have the  
19 capability to affect the deposits?

20 A Manager, assistant manager, supervisor.

21 Q As a result of your investigation did you  
22 form an opinion regarding whether or not Mr. Whalon  
23 was personally involved in the misappropriation of  
24 funds from Christy's?

1 A No.

2 Q Did you form an opinion as to whether any of  
3 the store managers or assistant managers were  
4 involved in the misappropriation of funds from  
5 Christy's?

6 A No.

7 Q After the period of January through  
8 March 2002, did Christy's change any of its systems  
9 or procedures to better account for shortages in the  
10 future?

11 MR. COLOMB: Objection. You can  
12 answer that.

13 A That's ever evolving as new technology comes  
14 to the market.

15 Q Were any significance changes made to the  
16 existing technology after March of 2002?

17 MR. COLOMB: Objection. You can  
18 answer.

19 A To date?

20 Q Yes.

21 A Yes.

22 Q When did those significant changes occur?

23 MR. COLOMB: Objection. You can  
24 answer.

1 A It decreased.

2 Q Did shortages still occur from time to time?

3 A It's a retail business. Yes, they do.

4 Q Has anyone since Michael Whalon's  
5 termination been disciplined or terminated for  
6 accounting, financial accounting for shortages?

7 MR. COLOMB: Objection. You can  
8 answer that.

9 A I am not sure I understand that question.

10 Q I will rephrase it.

11 Has any other employee after Michael  
12 Whalon's termination been disciplined, which could be  
13 suspended or other discipline, or terminated for that  
14 employee's failure to perform financial accounting  
15 practices regarding shortages?

16 MR. COLOMB: Objection. You can  
17 answer that.

18 A Yes.

19 Q What was the position of the person or  
20 persons who were so disciplined or terminated?

21 MR. COLOMB: Objection. You can  
22 answer.

23 A I would have to go down through each  
24 position and notify you.

1 Q Were they store managers to your knowledge?

2 MR. COLOMB: Objection. You can  
3 answer.

4 A There were some.

5 Q Mr. Whalon, was his position replaced by  
6 someone else after his termination?

7 A Not immediately.

8 Q Is someone performing the same or similar  
9 functions to what he performed when he was employed  
10 at the present time?

11 A There is.

12 Q And who is that person?

13 A Ken Camille, C A M I L L E.

14 Q When was Mr. Camille hired?

15 A Could you rephrase the question?

16 Q When was Mr. Camille hired?

17 MR. COLOMB: I want to note a  
18 continuing objection to the questions.

19 Go ahead and answer.

20 A Ken Camille has worked for us I believe  
21 since the company was founded.

22 Q When did he assume responsibilities that  
23 were similar or the same as Mr. Whalon's?

24 A 2005. I believe it was June.

1 Q Does he hold a present title at the company?

2 A Yes, he does.

3 Q What is that title?

4 A I believe it's marketing counselor, slash,  
5 supervisor.

6 Q Let me show you another document and ask you  
7 if you can identify it.

8 (Pause)

9 Q Have you seen that before?

10 A Yes.

11 Q Is that your handwriting on that document?

12 A Correct.

13 Q What is that document?

14 A It's a performance notice to Michael Whalon  
15 and termination.

16 Q Are you able to tell from that document when  
17 Mr. Whalon was terminated?

18 A 3/27/2002.

19 MR. SCOTT: Why don't we get that  
20 marked.

21 (Exhibit 10 marked for identification)

22 Q Who made the decision to terminate  
23 Mr. Whalon?

24 A I did.

1 Q Did you consult with anyone regarding your  
2 decision to terminate him?

3 MR. COLOMB: Objection to the extent  
4 that that's inquiring about counsel.

5 Q Excluding legal counsel. Thank you.

6 A The owner of the company, Christy Mihos.

7 Q At the top of the page of Exhibit 10 do you  
8 see something called the Date of Notice, top  
9 right-hand corner?

10 A Yes.

11 Q And what date is in that block?

12 A Two-twenty -- looks like five.

13 Q '02?

14 A 2002.

15 Q Was this document ever given to Mr. Whalon?

16 A Yes.

17 Q When was it given to him, if you recall?

18 A I believe 3/27/02.

19 Q Did he come to the company offices at that  
20 time?

21 A Yes, he did.

22 Q Had you made the decision to terminate him  
23 before he arrived at the meeting?

24 A Yes.

1 Q Do you remember when you made the decision  
2 to terminate him?

3 A February 22d, between that and February 27th  
4 I believe.

5 Q Within a week of the meeting that you have  
6 the four pages of notes on you made a decision to  
7 terminate him; is that correct?

8 A Correct.

9 Q I show you another document and ask you if  
10 you have seen that before.

11 Have you seen that before?

12 A Yes.

13 Q Is it correct that that letter has three  
14 pages to it?

15 A That's correct.

16 MR. COLOMB: I will stipulate the  
17 exhibit has three pages to it.

18 Q Would you like some more water?

19 A Yes.

20 MR. SCOTT: We will mark that.

21 (Exhibit 11 marked for identification)

22 Q I place before you what had a now been  
23 marked as Exhibit 11. Is it correct this is a letter  
24 from Michael Whalon to Christy's directed to your

1 Q And what is the document?

2 A It's a note from the Charis Counseling  
3 Center regarding Michael Whalon dated the 21st of  
4 March 2002.

5 MR. COLOMB: Off the record.

6 (Discussion off the record)

7 (Record read)

8 Q Had you ever seen that before today?

9 A Yes.

10 Q Was it faxed to your office?

11 A I received it at my office.

12 MR. SCOTT: That should be 12.

13 (Exhibit 12 marked for identification)

14 Q Let me show you another document and ask you  
15 if you have seen it before today.

16 A Yes, I have.

17 Q Would you identify the document, please.

18 A It's a letter from Michael Whalon to my  
19 attention.

20 Q Do you recall receiving it on or about  
21 April 9, 2002?

22 A Around then or after, yes.

23 MR. SCOTT: Let's mark that.

24 (Exhibit 13 marked for identification)

1 cards that would go with a certified mail receipt. I  
2 think what Mr. McKeown is questioning is that the  
3 dates on those receipts are from March of 2002, prior  
4 to the April letter.

5 MR. SCOTT: Okay. Can we agree  
6 those documents speak for themselves as to what they  
7 are? They may very well --

8 MR. COLOMB: They may or may not be  
9 related.

10 MR. SCOTT: Okay.

11 Q I show you another document and ask you if  
12 you can identify it.

13 A It's a document dated 3/27/02; time,  
14 2:35 PM, and it looks like a synopsis of a meeting  
15 that Mike and I and Jim Gilhooley had at our head  
16 office.

17 Q Was that the meeting where Mr. Whalon was  
18 notified that he was terminated?

19 A Correct.

20 Q Is that your handwriting on this document?

21 A No.

22 Q Do you know who created this document?

23 A I believe it was Jim Gilhooley. I did not  
24 see this until you produced it through court, you

1 know, through the lawyer.

2 Q What was Jim Gilhooley's position?

3 A Controller.

4 Q Was anyone else at the meeting on March 27,  
5 2002?

6 A Besides the three of us?

7 Q Correct.

8 A No.

9 Q Was his first name Jim?

10 A G I L H O O L E Y. I believe that's  
11 correct.

12 Q Did you direct Mr. Gilhooley to make notes  
13 at the meeting?

14 A I did.

15 Q But you didn't see those notes until  
16 litigation?

17 A I don't believe I did. I saw I believe a  
18 typed version of them.

19 Q Was the typed version of these notes  
20 something that you produced in connection with this  
21 litigation?

22 A I believe so.

23 Q Do you know whether the typed version of  
24 these notes has been entered as an exhibit in any

1 depositions that you have attended?

2 A I don't.

3 MR. COLOMB: Off the record?

4 MR. SCOTT: Sure.

5 (Discussion off the record)

6 MR. SCOTT: Give me a minute with  
7 Mr. Whalon and we will wrap up.

8 (Short recess taken)

9 MR. SCOTT: I have no further  
10 questions. I will defer to Attorney Colomb if he  
11 would like to inquire.

12 MR. COLOMB: I have a few follow-up  
13 questions.

14

15 CROSS EXAMINATION

16 BY MR. COLOMB:

17 Q Could you explain briefly the process  
18 whereby a deposit slip goes from the bank to the home  
19 office in the accounting procedures for stores?

20 A The deposit slip?

21 Q Yes.

22 A It doesn't go from the store to the head  
23 office or from the bank to the head office. It goes  
24 from -- it goes back to the store manager or

1 weekly basis?

2 A Deposit receipt.

3 Q Which is by the bank reflecting the amount  
4 deposited?

5 A That is correct.

6 Q Okay. Thanks.

7 Looking to Exhibit No. 5, which is your  
8 handwritten notes, all I want to clarify for the  
9 record is the order in which the items were written  
10 down by you. There is a first grouping which is  
11 2:02 PM, five numbered items. Do you see that at the  
12 very top of the page?

13 A Yes.

14 Q When was that to your knowledge?

15 A 2:02 PM on the 22d of February, 2002.

16 Q Okay. Was that prior to meeting with  
17 Mr. Whalon?

18 A Yes.

19 Q Underneath that you have five numbered items  
20 relating to a gentleman named Brian Lipps?

21 A Brian Lipps.

22 Q When was that, if you know, written on the  
23 sheet of paper relative to the other writing on the  
24 paper?

1 A The Brian Lipps, the telephone number, and  
2 the five points were written after the top points.  
3 They were written right after that. The 5:20 was  
4 written in at 5:20 when I called him. I just had a  
5 record of what time I called him.

6 Q Did you make the Brian Lipps entry prior to  
7 meeting with Mike Whalon?

8 A Yes.

9 Q And after meeting with Mike Whalon did you  
10 then go back and place 5:20 PM next to the Brian  
11 Lipps entry?

12 A Yes.

13 Q Why did you do that?

14 A Because I wanted a record of the time I  
15 actually talked to Brian Lipps.

16 Q You wrote down one through five in advance  
17 of speaking to Brian Lipps?

18 A Yes.

19 Q Okay.

20 Can you tell me what a lottery payout  
21 report is?

22 A The actual report or what a paid out is.

23 Q I want to know what the report is. What is  
24 a lottery paid out report as you have used that term

1 A Yes.

2 Q What, if anything, would you expect  
3 Mr. Whalon to have taken note of in reviewing page 4?

4 MR. SCOTT: Objection.

5 A The miscellaneous paid out for 576 on  
6 1/14/02 should have been reviewed, checked for  
7 authenticity, and if no documentation was found,  
8 further review.

9 Q Okay. What kind of documentation are you  
10 referring to?

11 A There should have been either a vendor form  
12 if it was a paid out for a vendor, which that's what  
13 miscellaneous paid out is. It's not a lottery paid  
14 out. There should have been backup detail to that,  
15 and if he reviewed this form, he should have also  
16 reviewed line 170 and 240 because that's been  
17 adjusted by 576.

18 Q What is the significance of that to you?

19 A Someone is trying to cover up a shortage.

20 Q During your testimony you were asked to  
21 identify individuals that you spoke to during the  
22 course of your investigation of the cash shortages  
23 involving Store 608 in the period approximately  
24 January through March of -- actually strike that.

1                   You were asked to identify individuals  
2 that you had spoken to concerning cash shortages at  
3 Store 608 and Store 610 covering the periods from the  
4 fall of 2001 into January and February of 2002. Do  
5 you remember testifying about that?

6                   A      I do.

7                   Q      Did you identify for us all of the  
8 individuals that you spoke to?

9                   A      I identified I believe two individuals at  
10 store level.

11                  Q      Were there other individuals that you spoke  
12 to?

13                  A      Yes.

14                  Q      Who were those individuals?

15                  A      They would have been office personnel. I  
16 believe Chris Downey.

17                  Q      And what was Chris Downey's position?

18                  A      Controller.

19                  Q      Why did you speak to Chris Downey, if you  
20 recall?

21                  A      I needed some reports.

22                  Q      Okay. Anyone else that you spoke to?

23                  A      I spoke to I believe Karen.

24                  Q      Who is Karen?

1 A Karen Gifford is accounts payable.

2 Q Why did you speak to Karen?

3 A Question of the lottery paid out.

4 Q Is that the lottery paid out reflected on  
5 Exhibit No. 6?

6 A Yes.

7 Q I place that back in front of you.

8 A Yes.

9 Q Did you speak to anyone else?

10 A I might have spoken to Christy. I am not  
11 sure.

12 Q By "Christy" do you mean Mr. Mihos?

13 A Yes.

14 Q Anyone else?

15 A Not that I recall.

16 MR. COLOMB: I am all set.

17 MR. SCOTT: Okay. Thank you. We  
18 will conclude.

19 (Discussion off the record)

20 CROSS EXAMINATION, continued

21 BY MR. COLOMB:

22 Q Mr. McKeown, I have placed Exhibit 5 in  
23 front of you. As you sit here today, in January or  
24 February of 2006 reviewing Exhibit 5, were you aware